

REMARKS

Claims 1, 5, 6 and 8 have been amended for clarification purposes and claims 10 - 32 have been canceled. New claims 33-42 have been added. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 35 U.S.C. §112 and 35 U.S.C. §§102/103 rejections set forth in the Office Action dated May 10, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

The Examiner required grammatical errors in the claims to be corrected. In addition, Applicant checked the specification and corrected some typographical errors. Typographical errors on page 21, paragraph [0136] lines 3 and 4; page 21, paragraph [0139] line 6; page 23, paragraph [0147] line 3; page 24, paragraph [0151] lines 2 and 3; and page 25, paragraph [0156] line 2 have been corrected.

Claims 1, 6, 8 and 17 and dependent claims 2-5, 7, 9-16 and 18-32 are rejected under 35 U.S.C. §112 first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which it is most nearly connected, to make and/or use the invention.

Applicant acknowledges the requirement for a deposit of biological material. Upon allowance of the claims in this application, the deposit will be made with the National Collections of Industrial Food and Marine Bacteria (NCIMB) and the Accession number will be added in place of the blank line.

As stated in the specification on page 32, the seed deposit is being maintained by Harris Moran Seed Company at their Sun Prairie, Wisconsin facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposit of the bean seed will be made with the National Collections of Industrial Food and Marine Bacteria (NCIMB).

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by NCIMB.

Accordingly, withdrawal of this rejection is requested.

Claims 10-12, 14-16, 18-25 and 28-32 are rejected under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the invention was filed, had possession of the claimed invention. Applicant has canceled claims 10-12, 14-16, 18-25 and 28-32. Applicant has canceled claims 23-25 in favor of new claims 27 to 34 and claims 29-31 in favor of new claims 41 and 42. Accordingly, withdrawal of this rejection is requested.

Claims 1, 5, 6, 8, 17-22, 26, 28, 32 and dependent claims 2-4, 7, 9-16, 23-25, 27, 29-31 are rejected under 35 U.S.C. 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant will amend claims 1, 6, 8 and 17 upon allowance to reflect the accession number. Accordingly, withdrawal of this rejection is requested.

Claim 5 is rejected as indefinite in the recitation of "or its parts". Applicant amended claim 5 as suggested by the Examiner. Accordingly, withdrawal of this rejection is requested.

Claim 17-22 is indefinite in its recitation of "derived". Applicant has canceled claims 17-22. Accordingly, withdrawal of this rejection is requested.

Claim 21 is indefinite in its recitation of "progeny". Applicant has canceled claim 21. Accordingly, withdrawal of this rejection is requested.


Claim 22 is indefinite in its recitation of "further 210104-derived bean plant . . .". Applicant has canceled claim 22. Accordingly, withdrawal of this rejection is requested.

Claims 18, 20, 22, 28 and 32 are vague and indefinite in the recitation "with a good plant adaptability. Applicant has canceled claims 18, 20, 22, 28 and 32. Accordingly, withdrawal of this rejection is requested.

Claim 26 is rejected as vague. Applicant has canceled claim 26. Accordingly, withdrawal of this rejection is requested.

Claims 10-12, 14-16, 18, 20, 22, 28 and 32 are rejected under 35 U.S.C 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C 103(a) as obvious over Thompson. Applicant has canceled claims 10-12, 14-16, 18, 20, 22, 28 and 32. Accordingly, withdrawal of this rejection is requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102, 103 and 112. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
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